

South Australia

# **National Energy Retail (South Australia) (Penalties) Variation Regulations 2021**

under the *National Energy Retail Law (South Australia) Act 2011*

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## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *National Energy Retail (South Australia) (Penalties) Variation Regulations 2021*.

### **2—Commencement**

These regulations come into operation on the day on which section 6 of the *Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020* comes into operation.

### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## Part 2—Variation of *National Energy Retail Regulations*

### 4—Variation of regulation 3—Interpretation

Regulation 3—after the definition of *the Law* insert:

*tier 1 civil penalty provision*—see regulation 6(2);

*tier 2 civil penalty provision* —see regulation 6(3);

*tier 3 civil penalty provision*—see regulation 6(4).

### 5—Substitution of regulation 6—Civil penalty provisions

Regulation 6—delete the regulation and substitute:

#### 6—Civil penalty provisions

- (1) For the purposes of section 4(1)(b) of the Law, a provision of the Law, other than a civil penalty provision under section 4(1)(a) of the Law, or Rules listed in Schedule 1 is prescribed to be a civil penalty provision.
- (2) A civil penalty provision listed in Schedule 1 Part 1 is prescribed for the purposes of section 4A(1)(c) of the Law and is a *tier 1 civil penalty provision*.
- (3) A civil penalty provision listed in Schedule 1 Part 2 is prescribed for the purposes of section 4A(1)(b) of the Law and is a *tier 2 civil penalty provision*.
- (4) A civil penalty provision to which section 4A(1)(a) of the Law applies is a *tier 3 civil penalty provision*.

### 6—Insertion of regulation 12A

After regulation 12 insert:

#### 12A—Indexation of civil and criminal penalty amounts

- (1) For the purposes of sections 300A and 300B of the Law, each civil penalty amount and criminal penalty amount is to be adjusted in accordance with the following formula:

$$P = Pc \times A / B$$

Where—

*P* is the amount that applies on and from the date of the adjustment

*Pc* is the amount that applied immediately before the first adjustment

*A* is—

- (a) for the first adjustment—the sum of the index numbers for the 4 quarters in the 2022 calendar year; and
- (b) for each subsequent adjustment—the sum of the index numbers for the 4 quarters in the calendar year that ended most recently before the date of the adjustment

***B*** is the sum of the index numbers for the 4 quarters in the 2019 calendar year

***A/B*** is calculated to the nearest 3 decimal places (and a fourth decimal place of 5 is to be rounded up).

- (2) An amount adjusted under this regulation is to be rounded up or down as follows:
  - (a) in the case of an amount that is \$10 000 or greater—to the nearest multiple of \$100 (with an amount of \$50 rounded up);
  - (b) in the case of an amount that is less than \$10 000—to the nearest multiple of \$10 (with an amount of \$5 rounded up).
- (3) If an amount adjusted under this regulation is less than the amount that applied immediately before the adjustment, the amount that applied immediately before the adjustment applies instead.
- (4) In this regulation—

***index number*** for a quarter means—

  - (a) the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician for that quarter; or
  - (b) if the Australian Statistician fails or ceases to publish that Index, another index number determined by the MCE for that quarter.

## **7—Substitution of Schedule 1**

Schedule 1—delete the Schedule and substitute:

### **Schedule 1—Civil penalty provisions**

#### **Part 1—Tier 1 civil penalty provisions**

#### **Provisions of the Law**

Section 20(2)

Section 22(1)

Section 22(3)

Section 23(1)

Section 24

Section 25(1)

Section 27

Section 37

Section 38

Section 43(2)

Section 43(3)(b)

Section 50(1)

Section 53(2)

Section 57

Section 59(1)

Section 66

Section 69(1)

Section 71(1)

Section 88

Section 103(8)

Section 105(9)

Section 106

Section 108

Section 112(2)

Section 120(11)

Section 143(2)(a)

Section 274(1)

Section 276(1)

Section 276(2)

Section 276(4)

Section 282(1)

### **Provisions of the Rules**

Rule 5(5)

Rule 19(2)(a)

Rule 19(2)(b)

Rule 51

Rule 52

Rule 59C(2)

Rule 59C(3)

Rule 59C(4)

Rule 59C(5)

Rule 71

Rule 72

Rule 73

Rule 74  
Rule 75B(1)  
Rule 75B(2)  
Rule 83  
Rule 85  
Rule 90  
Rule 91(c)  
Rule 106  
Rule 106A(1)  
Rule 106A(2)  
Rule 106A(3)  
Rule 106A(4)  
Rule 106A(5)  
Rule 106A(6)  
Rule 107(2)  
Rule 107(3)  
Rule 121(1)  
Rule 122  
Rule 124  
Rule 124A  
Rule 124B(1)  
Rule 124B(2)  
Rule 125  
Rule 126  
Rule 128(1)  
Rule 129(1)  
Rule 130(3)  
Rule 130(4)  
Rule 131(1)  
Rule 133(1)  
Rule 139(2)  
Rule 140  
Rule 141  
Rule 142  
Rule 144(1)

Rule 145(1)

Rule 146(1)

Rule 147(5)

Rule 147(6)

## **Part 2—Tier 2 civil penalty provisions**

### **Provisions of the Law**

Section 63

Section 156

### **Provisions of the Rules**

Rule 16(2)(b)

Rule 17(2)

Rule 21(1)

Rule 21(2)

Rule 21(3B)

Rule 21(3D)

Rule 21(3G)

Rule 21(4)

Rule 24(1)

Rule 29(1)

Rule 29(7)

Rule 30(2)

Rule 31(1)

Rule 31(2)

Rule 31(3)

Rule 32(1)

Rule 32(4)

Rule 33(3)

Rule 34(2)

Rule 34(3)

Rule 40(1)

Rule 40(2)

Rule 40(3)

Rule 40(6)

Rule 40(7)

Rule 42(1)  
Rule 43(1)  
Rule 44(1)  
Rule 44(2)  
Rule 44(3)  
Rule 45(1)  
Rule 45(2)  
Rule 46(4)  
Rule 46B(1)  
Rule 46B(2)  
Rule 46C(1)  
Rule 47(5)  
Rule 47(6)  
Rule 48(2)  
Rule 48A(1)  
Rule 50  
Rule 52B(1)  
Rule 55  
Rule 56  
Rule 59A(1)  
Rule 59A(2)  
Rule 59A(3)  
Rule 59A(7)  
Rule 70(4)  
Rule 80  
Rule 82  
Rule 135(1)  
Rule 135(3)  
Rule 136(2)  
Rule 136(3)  
Rule 137(2)  
Rule 137(3)  
Rule 147(7)

## **Part 3—Tier 3 civil penalty provisions**

### **Provisions of the Rules**

Rule 25(1)

Rule 25(2)

Rule 28(1)

Rule 28(2)

Rule 46(4A)

Rule 56A

Rule 86A

Rule 86B

Rule 99(4)

Rule 99A(3)

Rule 100(3)

Rule 132(1)

### **Made by the Governor**

on the unanimous recommendation of the Ministers of the participating jurisdictions and with  
the advice and consent of the Executive Council  
on 27 January 2021

No 5 of 2021